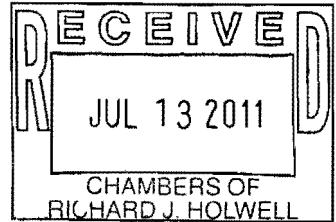


Holwell, J



UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

MICROSOFT CORPORATION,
Plaintiff,
v.
DATATERN, INC.,
Defendant.

Case No. 11 Cv. 2365 (RJH)

ECF Case

STIPULATION AND [PROPOSED] ORDER

HOLWELL, J.

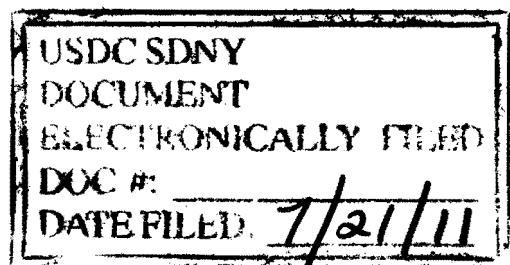
WHEREAS, on June 3, 2011, Defendant DataTern, Inc. ("DataTern") answered the complaint filed by Plaintiff Microsoft Corporation ("Microsoft");

WHEREAS, DataTern's June 3, 2011 Answer did not assert any counterclaims against Microsoft;

WHEREAS, on June 24, 2011, DataTern filed and served its First Amended Answer and Counterclaims on Microsoft through this Court's Electronic Case Filing system;

WHEREAS, in such pleading, DataTern for the first time raised two counterclaims against Microsoft (the "Counterclaims");

WHEREAS, there is a question under the Federal Rules of Civil Procedure regarding whether Federal Rule of Civil Procedure 12 (governing the time to reply to a counterclaim) or Federal Rule of Civil Procedure 15 (governing the time to reply to an amended pleading) applies here;



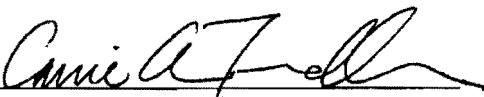
WHEREAS, the parties wish to avoid confusion and motion practice on this issue and thus have agreed that, for purposes of this action, the period for a reply under Rule 12 will apply (with an additional 3 days for electronic service under Federal Rule of Civil Procedure 6).

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel, that:

- (1) Microsoft and DataTern have authorized their respective counsel to enter into this Stipulation;
- (2) Microsoft shall have until July 18, 2011 to respond to the Counterclaims; and
- (3) The Stipulation may be signed in counterparts, each of which when signed shall be an original, but all of which shall together constitute one and the same instrument.

An electronic copy of this stipulation shall be deemed an original.

Dated: July 11, 2011
New York, New York

By: 

Steven J. Rocci
(rocci@woodcock.com)
Dale M. Heist
(heist@woodcock.com)
Daniel J. Goettle
(dgoettle@woodcock.com)
Aleksander J. Goranin
(agoranin@woodcock.com)

WOODCOCK WASHBURN LLP
Cira Centre, 12th Floor
2929 Arch Street
Philadelphia PA 19104-2891
Tel: +1 215 568 3100
Fax: +1 215 568 3439

Danielle L. Rose
(danielle.rose@kobrekim.com)
Michael S. Kim
(michael.kim@kobrekim.com)
Carrie A. Tandler
(carrie.tandler@kobrekim.com)

KOBRE & KIM LLP
800 Third Avenue
New York, New York 10022
Tel: +1 212 488 1200
Fax: +1 212 488 1220

Attorneys for Microsoft Corporation

By: *Lee Carl Bromberg/CAT*
with permission

William A. Zucker
(wzucker@mccarter.com)
Erik Paul Belt
(ebelt@mccarter.com)
McCARTER & ENGLISH, LLP
265 Franklin Street
Boston, Massachusetts 02110

Lee Carl Bromberg
(lbromberg@mccarter.com)

McCARTER & ENGLISH, LLP
265 Franklin Street
Boston, Massachusetts 02110
Tel: +1 617 449 6500

and

Timothy J. Haller
(haller@nshn.com)
Gregory P. Casimer
(casimer@nshn.com)
Gabriel I. Opatken
(gopatken@nshn.com)

245 Park Avenue
New York, New York 10167
Tel: +1 212 609 6800

Attorneys for DataTern, Inc.

NIRO, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
Tel: +1 312 236 0733
Fax: +1 312 236 3137

SO ORDERED this 19 day of July, 2011

RJH
HONORABLE RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE